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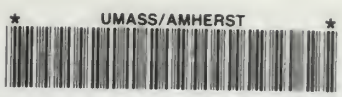

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
OFFICE OF THE CHIEF ADMINISTRATIVE JUSTICE
BOSTON, 02108

GOVERNMENT DOCUMENTS
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CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES, as amended, are promulgated pursuant to the provisions of G.L. c. 211B, s.15 to be effective October 1, 1989.

Arthur M. Mason
Chief Administrative Justice

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE CHIEF ADMINISTRATIVE JUSTICE

CHILD SUPPORT GUIDELINES

N.B., THESE GUIDELINES APPLY TO CURRENT CHILD SUPPORT ONLY. THEY DO NOT APPLY TO ALIMONY, THE DIVISION OF MARITAL PROPERTY, THE PAYMENT OF ARREARS, RESTITUTION, OR REIMBURSEMENT, NOR DO THEY APPLY WHERE THE PARTIES HAVE MADE AN AGREEMENT WHICH IS APPROVED BY THE COURT.

THERE SHALL BE A PRESUMPTION THAT THESE GUIDELINES APPLY, ABSENT AGREEMENT OF THE PARTIES, IN ALL CASES SEEKING THE ESTABLISHMENT OR MODIFICATION OF A CHILD SUPPORT ORDER. A SPECIFIC, WRITTEN FINDING THAT THE GUIDELINES WOULD BE UNJUST OR INAPPROPRIATE IN A PARTICULAR CASE SHALL BE SUFFICIENT TO REBUT THE PRESUMPTION IN THAT CASE.

These guidelines are promulgated under the authority granted by Chapter 310 of the Acts of 1986, which amended Chapter 211B by adding section 15.

The child support guidelines are formulated to be used by the justices of the Trial Court, whether the parents of the children are married or unmarried, in setting temporary, permanent or final orders for current child support, in deciding whether to approve agreements for child support, and in deciding cases that are before the court to modify existing orders. The guidelines, in and of themselves, do not constitute a sufficient change of circumstances to warrant a modification. They are intended to be of assistance to members of the bar and to litigants in determining what level of payment would be expected of them given the relative income levels of the parties.

In establishing the guidelines, due consideration has been given to the views provided by the Committee on Child Support Guidelines, as they related to the following principles enumerated in G.L. c.211B sec.15 as inserted by Chapter 310 of the Acts of 1986:

1) To minimize the economic impact on the child of family breakup;
2) To encourage joint parental responsibility for child support in proportion to, or as a percentage of income;
3) To provide the standards of living the child would have enjoyed had the family been intact;
4) To meet the child's survival needs in the first instance, but to the extent either parent enjoys that higher standard of living to entitle the child to enjoy that higher standard;
5) To protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance;
6) To take into account the non-monetary contributions of both the custodial and non-custodial parents;
7) To minimize problems of proof for the parties and of administration for the courts;
8) To allow for orders and wage assignments that can be adjusted as income increases or decreases.

October 1, 1989

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I. INCOME DEFINITION

A. For purposes of these guidelines, income is defined as gross income from whatever source. Those sources include but are not limited to the following:

1) salaries and wages (including overtime and tips) and income from self-employment (except in certain instances, see B. below)
2) commissions
3) severance pay
4) royalties
5) bonuses
6) interest and dividends
7) income derived from businesses/partnerships
8) social security
9) veteran's benefits
10) insurance benefits (including those received for disability and personal injury)
11) worker's compensation
12) unemployment compensation
13) pensions
14) annuities
15) income from trusts
16) capital gains in real and personal property transactions to the extent that they represent a regular source of income
17) spousal support received from a person not a party to the order
18) contractual agreements
19) perquisites or in kind compensation to the extent that they represent a regular source of income
20) unearned income of children (in the court's discretion)
21) income from life insurance or endowment contracts
22) income from interest in an estate (direct or through a trust)
23) lottery or gambling winnings received either in a lump sum or in the form of an annuity
24) prizes or awards
25) net rental income

B. In individual cases, the court may choose to disregard overtime income or income derived from a second job. However, consideration of such income may be appropriate in certain instances such as those where such income constituted a regular source of income when the family was intact.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. RELATIONSHIP TO ALIMONY OR SEPARATE MAINTENANCE PAYMENTS

So long as the standard of living of the children is not diminished, these guidelines do not preclude the court from deciding that any order be denominated in whole or in part as alimony or a separate maintenance payment. It is the responsibility of counsel representing the parties to present the tax consequences of proposed orders to the court.

B. CLAIMS OF PERSONAL EXEMPTIONS FOR CHILD DEPENDENTS

In setting a support order, the court may make an order regarding the claims of personal exemptions for child dependents between the parties to the extent permitted by law.

C. MINIMUM AND MAXIMUM LEVELS

The guidelines recognize the principle that, in many instances, to maintain a domicile and a reasonable standard of living for the minor children, the custodial parent will choose to work. In those cases, a disregard of gross income of the custodial parent is to be applied up to a maximum of $15,000. The formula in these guidelines is intended to be adjusted where the income of the custodial parent exceeds the $15,000 disregard after consideration of day care expenses.

These guidelines are also intended to ensure a minimum subsistence level for those non-custodial parents whose income is less than $200 per week. However, it is the obligation of all parents to contribute to the support of their children. To that end, in all cases, a minimum order of $50.00 per month should be set. This minimum order corresponds to the $50.00 disregard of support payments that is passed through to families receiving Aid to Families With Dependent Children mandated by Federal law. This minimum should not be construed as limiting the court's ability to set a higher order, should circumstances permit.

Where the court makes a determination that either or both of the parties is either purposely unemployed or underemployed, the section of this guideline entitled ATTRIBUTION OF INCOME should be consulted.

These guidelines are not meant to apply where the combined gross income of the parties exceeds $100,000 or where the gross income of the non-custodial parent exceeds $75,000. In cases where income exceeds these limits, the court should consider the award of support at the $75,000/$100,000 level as a minimum presumptive level of support to be awarded. Additional amounts of child support may be awarded at the judge's discretion.

D. CUSTODY AND VISITATION

1) Custody

These guidelines are based upon traditional custody and visitation arrangements. Where the parties agree to shared physical custody or the court determines that shared physical custody is in the best interests of the children, these guidelines are not applicable. The guidelines are also not meant to apply for cases in which there is split physical custody, i.e., each parent has physical custody of one or more children.

2) Visitation

These guidelines recognize that children must be allowed to enjoy the society and companionship of both parents to the greatest extent possible. The court may adjust the amount of child support beyond the 2 percent range (see Basic Order, Section III A.) after taking into consideration the parties' actual time sharing with the children and the relative resources, expenses, and living standards of the two households.

In some instances, the non-custodial parent may incur extraordinary travel-related expenses in order to exercise court ordered visitation rights. To foster parental involvement with the children, the court may wish to consider such extraordinary expenses in determining the support order.

E. CHILD CARE AS DEFINED BY INTERNAL REVENUE CODE SECTION 21

The basic child support obligation set out in the guidelines includes the non-custodial parent's share of day care expenses. Child care expenses are not seen as a separate support item and responsibility for them resides with the custodial parent.

The reasonable cost of day care actually paid is to be subtracted from the custodial parent's gross income before the disregard formula is applied.

F. AGE OF THE CHILDREN

To reflect the costs of raising children, age has been broken down into four groups: 0-6, 7-12, 13-18, and over 18. A single adjustment to the basic order should be made based on the age of the oldest child for whom support is to be ordered. The support order where the oldest child is six or under should be the basic support order according to the schedule. Where the oldest child is 7-12, the order should be increased by 10 percent of the basic order amount. Where the oldest child is 13 or older, the order should be increased by 15 percent of the basic order amount. For cases involving children between the ages of 18 and 21, the amount of the order, if any, will be left to the court's discretion.

Where the parties file an agreement with the court that allows for private payment between the parties, it is suggested that the incremental age issue be addressed in the agreement.

G. HEALTH INSURANCE, UNINSURED, AND EXTRAORDINARY MEDICAL EXPENSES

1) Health Insurance

When the court makes an order for child support, the court shall determine whether the obligor under the order has health insurance on a group plan available to him/her through an employer or organization or has health insurance or other health coverage available to him/her at reasonable cost that may be extended to cover the child for whom support is ordered. When the court makes a determination that the obligor has such coverage, the court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of such child, unless the obligee has already provided such coverage for the child at a lesser cost (except for health insurance funded under public assistance programs), or has and prefers to continue such coverage irrespective of cost.

If insurance is to be provided by the obligor, the support order should be reduced by the full amount of the obligor's actual cost of group health insurance, and not the difference between an individual and family policy. However, there shall be no reduction if the obligor has a preexisting family health insurance policy which could be amended to name the additional dependents to the policy at no cost to the obligor. Should health insurance not be provided for any period for which it is ordered, the credit for the premium payment shall be revoked and the order shall be increased by the amount of the credit during the period of noncompliance.

2) Routine Uninsured Medical and Dental Expenses

The custodial parent shall be responsible for the payment of the first $100 per child per year for routine medical and dental expenses. For amounts above that limit, the court shall allocate costs on a case by case basis. No reduction in the child support order should be allowed.

3) Uninsured Extraordinary Medical and Dental Expenses

The payment of uninsured extraordinary medical and dental expenses incurred by the minor children, absent agreement of the parties, shall be treated on a case by case basis. (Example: orthodontia, psychological/psychiatric counseling, etc.) In such cases, where the court makes a determination that such medical and dental services are necessary and are in the best interests of the child, consideration toward a reduction in the child support order should be given.

H. ATTRIBUTION OF INCOME

If the court makes a determination that either or both parties is earning substantially less than he or she could through reasonable effort, the court may consider potential earning capacity rather than actual earnings. In making this determination, the court shall take into consideration the education, training, and past employment history of the party. These standards are intended to be applied where a finding has been made that the party is capable of working and is unemployed, working part-time or is working a job, trade, or profession other than that for which he/she has been trained.

This determination is not intended to apply to a custodial parent with children who are under the age of six living in the home.

I. PRIOR ORDERS FOR SUPPORT

To the extent that prior orders for spousal and child support are **actually** being paid, the court should deduct those payments from the gross income before applying the formula to determine the child support order. This section applies only to orders for child support for children **other than** the one who is the subject of the pending action.

J. EXPENSES OF SUBSEQUENT FAMILIES

In instances where the non-custodial parent has remarried and has children by a subsequent marriage, the court should examine such circumstances closely to determine in the allocation of available resources whether consideration beyond Part II Section I (Prior Orders of Support) should be given when the custodial parent of children borne of the first marriage, or subsequent marriages appears before the court seeking a modification of the existing child support order. In actions pursuant to G.L. c.209C, this paragraph shall be construed to apply equally to children born out of wedlock.

III. CHILD SUPPORT OBLIGATION SCHEDULE

A. BASIC ORDER

The basic child support obligation, based upon the income of the non-custodial parent is as follows.

GROSS WEEKLY INCOME	NUMBER OF CHILDREN		
	1	2	3
$ 0 - $200	Discretion of the court, but not less than $50.00 per month.		
$201 - $500	25%(±2%)	28%(±2%)	31%(±2%)
$501 - max.	27%(±2%)	30%(±2%)	33%(±2%)

Within the discretion of the court, and in consideration of the totality of the circumstances of the parties, the order may be either increased or decreased by 2 percent. Where the court must set a support order where there are more than three children, the minimum order is to be no less than that contained in this guideline for three children, to be increased within the discretion of the court depending upon the circumstances of each case.

B. AGE DIFFERENTIAL

The above orders are to be increased to reflect the cost of raising older children. The following percentages are intended to be applied to the age of the oldest child in the household for whom support is sought under the pending action.

AGE OF OLDEST CHILD	PERCENTAGE INCREASE
0 - 6	Basic Order Applies
7 - 12	Basic Order +10% of Basic Order
13 - 18	Basic Order +15% of Basic Order
Over 18	Discretion of the court (and if statute permits)

C. CUSTODIAL PARENT INCOME ADJUSTMENT

Where the custodial parent works and earns income in excess of $15,000 after consideration of day care expenses, the support order is to be reduced by the percentage that the excess represents in relation to the combined incomes of both parents minus the custodial parent's disregard.

WORKSHEET

CHILD SUPPORT GUIDELINES

All provisions of the Guidelines (pp. 1-6) should be reviewed prior to the completion of the worksheet. These guidelines will apply (absent a prior agreement acceptable to both parties) in cases where combined gross income of both parties does not exceed $100,000 and where the income of the non-custodial parent does not exceed $75,000.

1. BASIC ORDER

a) Non custodial gross weekly income (less prior support orders actually paid, for child/family other than the family seeking this order) _____

b) % of gross/number of children (from chart III A.) _____%

c) Basic Order (a) x (b) (A) _____

2. ADJUSTMENT FOR AGES OF CHILDREN

a) Age of oldest child _____

b) % increase for age (from chart III B.) _____%

c) Age add on (2b) x (A) _____

d) Adjusted order (A) + (2c) (B) _____

3. CUSTODIAL PARENT INCOME ADJUSTMENT

a) Custodial parent gross income _____

b) Less $15,000 - $15,000

c) Less day care cost (annual) -_____

d) Custodial adjusted gross _____

e) Non-custodial gross (annual) _____

f) Total available gross (d) + (e) _____

g) Line 3(d) _____ Line 3(f) _____

h) 3(d) divided by 3(f) _____ per cent

i) Adjustment for custodial income (Line 3h %) x (B) (C) _____

4. CALCULATION OF FINAL ORDER

a) Adjusted order (B) above (B) _____

b) Less adjustment for income (C) above (C)-_____

c) Less weekly cost of family group health insurance [under the provisions of section G(1)] _____

WEEKLY SUPPORT ORDER (B)-(C)-4(c) $ _____

October 1, 1989

SAMPLE WORKSHEET

Non custodial parent gross annual income	$40,000 ($769/wk)
Weekly support paid-child of prior marriage	$ 40
Custodial parent gross annual income	$28,000
2 children, ages 6 & 8 (second marriage their support sought under this order)	
Annualized day care cost	$ 4,160
Non custodial weekly cost of family group health insurance	$ 12

1. BASIC ORDER

a) Non custodial gross weekly income (less prior support orders actually paid, for child/family other than the family seeking this order) 729

b) % of gross/number of children (from chart III A.) 30 %

c) Basic Order (a) x (b) (A) 219

2. ADJUSTMENT FOR AGES OF CHILDREN

a) Age of oldest child 8

b) % increase for age (from chart III B.) 10 %

c) Age add on (2b) x (A) 22

d) Adjusted order (A) + (2c) (B) 241

3. CUSTODIAL PARENT INCOME ADJUSTMENT

a) Custodial parent gross income	28,000
b) Less $15,000	- 15,000
c) Less day care cost (annual)	- 4,160
d) Custodial adjusted gross	8,840
e) Non-custodial gross (annual)	40,000
f) Total available gross (d) + (e)	48,840

g) Line 3(d) 8,840 Line 3(f) 48,840

h) 3(d) divided by 3(f) 18 per cent

i) Adjustment for custodial income (Line 3h %) x (B) (C) 43

4. CALCULATION OF FINAL ORDER

a) Adjusted order (B) above (B) 241

b) Less adjustment for income (C) above (C)- 43

c) Less weekly cost of family group health insurance (under the provisions of section G(1) - 12

WEEKLY SUPPORT ORDER (B)-(C)-4(c) $ 186

October 1, 1989